

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA

Andrew Marshall McElrath,	)	Civil Action No.: 5:14-743-BHH
	)	
Plaintiff,	)	
	)	<b>ORDER AND OPINION</b>
vs.	)	
	)	
Warden Stevenson; Warden Bush;	)	
Major Washington; Lt. Rezendes; Sgt.	)	
Davenport, and CO Gerity,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Andrew Marshal McElrath (“the plaintiff”), proceeding *pro se*, initiated this civil rights action pursuant to 42 U.S.C. § 1983 against the defendants Warden Stevenson, Warden Bush, Major Washington, Lt. Rezendes, Sgt. Davenport, and CO Gerity (“the defendants”) seeking compensatory damages for a hand injury he received. (Compl., ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Kaymani D. West for pretrial handling and a Report and Recommendation. Magistrate Judge West recommends that the court dismiss this case *without prejudice*. (ECF No. 12.) The Report and Recommendation sets forth in detail the relevant facts and standards of law on this matter and the court incorporates them without recitation.

**BACKGROUND**

The plaintiff filed this action against the defendants on March 6, 2014, which challenges the vote that denied him parole. On April 4, 2014, the Magistrate Judge issued a Report and Recommendation recommending that this case be dismissed *without prejudice* for failure to state a plausible federal claim against any defendant. (ECF No. 12.)

On April 14, 2014, the plaintiff filed Objections. (ECF No. 14.) The plaintiff also filed motions for summary judgment and default. (ECF Nos. 25, 29, 30.)

### **STANDARD OF REVIEW**

The Magistrate Judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a *de novo* review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). In the absence of a timely filed, specific objection, the Magistrate Judge’s conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005).

### **DISCUSSION**

As noted above, the plaintiff filed objections to the Magistrate Judge’s Report and Recommendation which the Court has carefully reviewed. After a careful review of the plaintiff’s objections, it is fair to say that the plaintiff does not make any specific objections to the Report and Recommendation, and provide no basis for this Court to deviate from the Magistrate Judge’s recommended disposition. Rather, the plaintiff’s brief response to the

Report and Recommendation merely rehashes the same allegations raised in his complaint. The Magistrate Judge recommended summary dismissal of this case due to the plaintiffs' failure to state a plausible federal claim. The Court finds that the Magistrate Judge prepared an extensive and detailed Report and Recommendation that appropriately addressed the plaintiffs' arguments. The Magistrate Judge clearly and particularly explained why the plaintiffs' claims fail. The Court agrees with the Magistrate Judge's recommendation and overrules the plaintiff's objections.

### **CONCLUSION**

For the reasons stated above and by the Magistrate Judge, the court overrules the plaintiffs' objections and adopts and incorporates by reference the Magistrate Judge's Report and Recommendation. Accordingly, the Report and Recommendation is incorporated herein by reference and this action is DISMISSED *without prejudice* and without issuance and service of process. The plaintiff's motions for summary judgment and default (ECF Nos. 25, 29, 30) are denied as moot.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks  
United States District Judge

March 18, 2015  
Greenville, South Carolina